



INTERIOR BOARD OF INDIAN APPEALS

Heirs of Jimmie George, Sr. v. Alaska Regional Director,
Bureau of Indian Affairs

37 IBIA 146 (02/22/2002)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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HEIRS OF JIMMIE GEORGE, SR.,	:	Order Docketing Appeal, Vacating
Appellants	:	Decision, and Remanding Case
	:	
v.	:	
	:	Docket No. IBIA 02-59-A
ALASKA REGIONAL DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	February 22, 2002

On February 19, 2002, the Board of Indian Appeals (Board) received a notice of appeal from the Heirs of Jimmie George, Sr. (Appellants). Appellants seek review of a December 31, 2001, letter written to the Angoon Community Association (Association) by the Alaska Regional Director, Bureau of Indian Affairs (Regional Director; BIA). For the reasons discussed below, the Board finds that the Regional Director's decision must be vacated and this matter remanded to him for further consideration.

As a procedural matter, this appeal would ordinarily appear to be untimely. The Regional Director's decision was issued on December 31, 2001, and the notice of appeal was not postmarked until February 15, 2002. 43 C.F.R. § 4.332(a) provides that a notice of appeal to the Board must be filed within 30 days of the appellant's receipt of the decision being appealed. However, Appellants state that the Regional Director did not notify them of his decision. Even if the Regional Director had notified them, his decision fails to provide appeal information required by 25 C.F.R. § 2.7. Because of this failure, Appellants' right to appeal was tolled under 25 C.F.R. § 2.7(b). The Board concludes that this appeal is timely.

The Regional Director's December 31, 2001, letter states in its entirety:

This is to notify you that the 10.24 acres of property described by Metes and Bounds in a DEED dated March 24, 1948, by and between Hood Bay Salmon Company, Grantor, and the United States of America, Grantee, is held in trust for the Angoon Community.

Acceptance of title has been made pursuant to the Indian Reorganization Act of June 18, 1934 (25 U.S.C. 465). The United States of America has accepted title on behalf of the Angoon Community Association.

Appellants assert that this parcel was claimed by Jimmie George, Sr., under the Native Allotment Act of 1906, and that title to the parcel is presently the subject of adjudication before the Bureau of Land Management (BLM), U.S. Department of the Interior. In support of their appeal, Appellants provide a copy of a March 17, 1997, memorandum from the Office of the Regional Solicitor, Alaska Region, to the Director of the Alaska State Office, BLM. Among other things, this memorandum states:

The Angoon Community Association has asserted that land encompassed in U.S. Survey 1480 (formerly known as the Hood Bay Cannery) is held by the United States in trust for the Association. We have tried to verify this claim without success. We have contacted the Office of Trust Responsibilities of the Bureau of Indian Affairs in Washington, D.C., as well as the Area Director's Office in Juneau, and have found no documentation that the acquisition of U.S. Survey 1480 was approved by either the Commissioner of Indian Affairs or the Secretary of the Interior. * * *

Although the 1948 deed from Hood Bay Salmon Company recites that the lands were conveyed to the "United States of America, grantee, in trust for the Angoon Community Association," there must be an acceptance by the United States before the lands can be considered trust lands. Historically, this acceptance was signified by a signed approval on the deed itself or on the transmittal letter forwarding the deed to the BIA Central Office in Washington, D.C.

Mar. 17, 1997, Memorandum at 2.

Appellants also submit a copy of an April 27, 2000, opinion issued by Administrative Judge C. Randall Grant in In the Matter of the Native Allotment Application of Jimmie A. George, Sr., No. AA-6580, Parcel C. Judge Grant, who was acting as Hearing Officer for BLM, stated his opinion that this tract was recognized as belonging to Jimmie George, Sr., and that the Angoon Community Association had knowledge of Jimmie George, Sr.'s, claim to the parcel.

Appellants state that BLM has not completed the adjudication of their claim.

The Regional Director's three sentence letter gives no reasons for the conclusion that this parcel is held in trust for the Association. Indeed, the letter is so ambiguously worded that it is impossible to know if the Regional Director was saying that the land has been held in trust for the Association since on or about March 24, 1948, or whether he is making a present decision to take the land into trust. If the former is the case, the Regional Director's decision would be in conflict with the March 17, 1997, memorandum from the Solicitor's Office, which found no evidence that the deed had been properly accepted. At the very least, such a change in the Department's position must be explained. See, e.g., Bonaparte v. Commissioner of Indian Affairs, 9 IBIA 115 (1981). If the latter is the case, the Regional Director's decision would be in

conflict with the Department's longstanding prohibition of trust acquisitions in Alaska (other than for the Metlakatla Indian Community and its members). See 25 C.F.R. § 151.1; 45 Fed. Reg. 62034 (Sept. 18, 1980); 64 Fed. Reg. 17577-78 (Apr. 12, 1999); 66 Fed. Reg. 3454 (Jan. 16, 2001).

In addition, the Regional Director fails to acknowledge the BLM adjudication concerning the land at issue here. The Board finds it extremely difficult to believe that the Regional Director was unaware of the proceedings before BLM.

The Board has frequently held that a BIA official must set forth a reasoned basis for a decision. See, e.g., Town of Ignacio, Colorado v. Albuquerque Area Director, 34 IBIA 37, 42 (1999), and cases cited there, including Bowen v. American Hospital Association, 476 U.S. 610, 626-27 (1986). Here, the Regional Director fails to give either the parties or the Board any information whatsoever concerning the reasoning behind his decision. Under these circumstances, the Board believes that the best course of action is to vacate the Regional Director's decision and give him an opportunity either to issue a decision which sets forth that reasoning or to reconsider his decision.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. §§ 4.1 and 4.318, this appeal is docketed, the Regional Director's December 31, 2001, decision is vacated, and this matter is remanded to the Regional Director for further consideration.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge